IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

SECOND APPEAL NO.1365 OF 2005

Lalasaheb Madhavrao Mane. ...Appellant.

Vs.

Sanjay Ramchandra Pawar & Ors. ...Respondents.

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Mr.Vishwanath Talkute for the Appellant.

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CORAM : DR. D.Y. CHANDRACHUD, J.

December 14, 2005.

P.C.:

The Second Appeal is at the behest of the First Defendant in a suit for partition. The plaintiff, Shantabai, died and the First and Second Respondents were joined as parties since under a registered Will dated 26th September 1996, Shantabai had bequeathed the properties to the First and Second Respondents. There is no factual dispute about the position that Shantabai had only 4/9th share. Hence, the First Appellate Court has modified the decree of the Trial Court by directing that the Will executed by Shantabai shall operate in respect of her 4/9th share. On behalf of the Appellant, it was sought to be submitted that the Will has not been duly proved. In support of the Will both the scribe and one

attesting witness were examined and they deposed to the execution of the will and to the physical and mental condition of the testator. The will has been registered in the office of the Sub Registrar at Khanapur. The Appellant herein, as noted by the Court below in para 29 of the judgment, sought to challenge the will for the first time in appeal. Neither was the Written Statement amended to incorporate a challenge to the will, nor was there any additional statement. In these circumstances, the finding that the will has been duly proved cannot be faulted. From the final judgment and decree of the Additional District Judge, it is clear that the First and Second Respondents have been held to be entitled only to the extent of a the 4/9th share of Shantabai of which an extent of 41 Ares has been bequeathed to the Second Respondent out of Gat No.304. The Second Appeal does not raise any substantial question of law. There is no merit in the Second Appeal which is accordingly dismissed.

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